

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



SEAN McTERRELL,

Plaintiff,

v.

18-cv-1028 (JLS) (HKS)

CARL J. KOENIGSMANN, *et al.*,

Defendants.

DECISION AND ORDER

Sean McTerrell commenced this action against Defendants—various medical and security staff members employed by the New York Department of Corrections and Community Supervision (“DOCCS”)—on September 18, 2018, pursuant to 42 U.S.C. § 1983. Dkt. 1. His Amended Complaint brings 14 causes of action, including: denial of various medical treatment (Causes of Action 1-5, and 14); failure to protect (Cause of Action 9); excessive force (Causes of Action 7 and 8); unlawful conditions of confinement (Causes of Action 10 and 11); First Amendment retaliation (Cause of Action 12); burdening the right to practice religion (Cause of Action 13); and violating the right to privacy (Cause of Action 6). Dkt. 70. McTerrell also indicates that he is suing Southport Nurse Jane Doe and Susan Lamb in their “individual and/or official capacity.” *Id.* at ¶¶ 8 and 10.

On January 23, 2020, the Court referred this case to United States Magistrate Judge Hugh Scott for all pre-trial proceedings under 28 U.S.C. §

636(b)(1)(A) and (B). Dkt. 50. Pursuant to the referral order, Judge Scott was to hear and report upon dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). *Id.* The referral was later reassigned to United States Magistrate Judge H. Kenneth Schroeder, Jr. Dkt. 88.

Defendants filed a partial motion to dismiss on March 1, 2021, with respect to Causes of Action 1-5, 8, 9, 12, 14, and any claims brought against any Defendant in their official capacity. Dkt. 84. McTerrell did not respond. On August 18, 2021, Judge Schroeder issued a Report, Recommendation, and Order (“R&R”), which recommends denying in part and granting in part Defendants’ motion. Dkt. 95. Specifically, it recommends denying the motion with respect to six Causes of Action, including: Cause of Action 1, denial of HIV medicine against Lamb and Nurse Waters;¹ Cause of Action 2, denial of HIV medicine against Donna Bonning; Cause of Action 9, failure to protect against Dr. Galante; and Cause of Action 12, First Amendment retaliation against Kathleen Sault, to the extent it is premised on the written grievance filed by McTerrell against three other DOCCS employees. The R&R recommends granting Defendants’ motion with respect to: Cause of Action 4, denial of treatment for kidney failure against Dr. Williams, Deborah Graf, Dr. Laskowski, and Attica Doctors John and Jane Does; Cause of Action 12, to the extent it is premised on the verbal threat made by McTerrell to file a grievance against Sault; and Cause of Action 14, deliberate indifference to adequate medical

¹ The Court notes that while Nurse Waters is not identified as a defendant on the docket, Nurse Waters was identified as one who allegedly denied McTerrell HIV medicine in violation of the Eighth Amendment.

care and needs against Drs. Koenigsmann and Morley. Additionally, the R&R recommends dismissing any claims brought against any Defendant in their official capacity.

Defendants filed an objection to the R&R on August 31, 2021. Dkt. 97. They challenge the recommendation to deny their motion with respect to Causes of Action 1, 2, 9, and the portion of 12 concerning the written grievance. McTerrell did not respond.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which an objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Court has conducted a *de novo* review of the relevant record in this case, and studied the R&R and Defendants' objection. Based on that review, the Court accepts Judge Schroeder's recommendations.

CONCLUSION

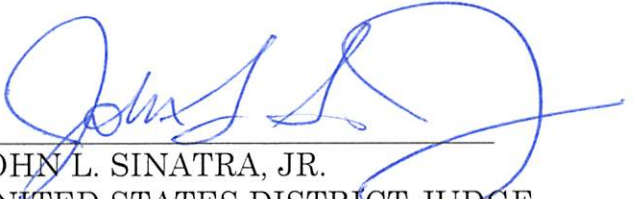
For the reasons stated above, Defendants' partial motion to dismiss is DENIED in part and GRANTED in part. Causes of Action 4, 12 (to the extent it is premised on the verbal threat), and 14 are dismissed. All claims brought against any Defendant in their official capacity are also dismissed. Otherwise, all

remaining Causes of Action survive. Defendants shall answer the Amended Complaint by October 29, 2021.

The Clerk of Court shall amend the docket to reflect that Nurse Waters is a defendant in this case and direct the U.S. Marshals Service to serve Nurse Waters in accordance with Dkt. 71. The case remains referred to Judge Schroeder.

SO ORDERED.

Dated: October 5, 2021
 Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE